MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2742 OF 2007

IN

SUIT NO. 1826 OF 2007

AISHWARYA PUSALKAR .. PLAINTIFF

Vs.

ATUL SHIVRAM PUSALKAR & ANR. .. DEFENDANTS

Ms. K. C. Nichani with Mrs. Vijayalaxmi Nikam for plaintiff

Mr. Nitin V. Gangal for defendants

CORAM: **SMT. RANJANA DESAI, J.**

DATED: SEPTEMBER 21, 2007.

P.C.

. This notice of motion is taken out by the plaintiff inter alia for appointment of Court Receiver. The 1st defendant is the husband of the plaintiff and the 2nd defendant is her mother-in-law. The plaintiff claims to have 10% share in the suit partnership along with the defendants who have 40% and 50% shares respectively.

2. I have heard the learned counsel for the plaintiff and the learned counsel for the defendants.

3. I have perused the affidavit-in-support of the motion as well as the affidavit-in-reply and affidavit-in-rejoinder.

4. The 1st defendant Atul Shivram Pusalkar has filed an undertaking in this court dated 21st September, 2007. Paragraph 1 of the said undertaking reads as under:

. "Pursuant to the oral direction given by this Hon'ble Court dated 20/09/2007, I hereby give a solemn undertaking to this Hon'ble Court that pending hearing and final disposal of the present Suit No. 1826 of 2007, I will not surrender, transfer, create third party interest, assign or deal with and/or dispose of partly or fully right, title and interest in respect of the properties as well as business of the Suit Partnership under name and style of M/s. Chemco Test Laboratory, Mumbai to the extent of 10% share in the said Partnership Firm. The said undertaking is without prejudice to my rights and contentions in the present Suit."

5. In my opinion, this undertaking takes care of the 10% share of the plaintiff in the suit partnership firm. The plaintiff is, therefore, sufficiently protected. In view of this undertaking at this stage no further orders are necessary on the motion.

6. In my opinion, looking to the nature of the suit and the relationship of the parties and the fact that the 2nd defendant is 85 years old and is ailing, the suit needs to be expedited. Hence the undertaking of Shri Atul Pusalkar dated 21/9/07 is taken on file and accepted by this court. It is marked as "X". Suit No. 1826 of 2007 is expedited. Office is directed to place it on my board on 27/9/07 for framing issues.

7. It is not necessary for me to express any opinion as regards the other prayer made in the motion. I have expedited the suit. Final disposal of the suit will take care of all the reliefs prayed for by the plaintiff in the motion.

8. Defendant 2 is not present. I am informed that she is 85 years old and is not keeping goods

health. The learned counsel for the 2nd defendant makes a statement on behalf of the 2nd defendant that in terms of the undertaking filed on behalf of the 1st defendant 10% share of the plaintiff shall be protected by the 2nd defendant during the pendency of the suit. This statement is accepted.

9. Motion is disposed of in the aforestated terms.

JUDGE